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4 UNITED STATES DISTRICT COURT

5 DISTRICT OF NEVADA

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7 GLOBAL EVENTMAKERS, INC.,)
8 Plaintiff,) 2:05-CV-00019-PMP-PAL
9 v.) 2:06-CV-00050-PMP-PAL
10 AMERICAN MONUMENT) O R D E R
11 FOUNDATION, LLC,)
12 Defendant.)
12 _____)

13 Presently before the Court is Plaintiff Global Eventmakers, Inc.'s ("Global")
14 Motion for Preliminary Injunction and Renewed Application for Writ of Possession (Doc.
15 #69) with supporting declarations of Lawrence A. Creeger and Shawn A. Mangano (Doc.
16 ##70-72), filed on June 9, 2006. Defendant American Monument Foundation, LLC
17 ("AMF") filed an Opposition to Global Eventmaker's Motion for Preliminary Injunction
18 and Renewed Application for Writ of Possession (Doc. #83) on June 16, 2006. Plaintiff
19 filed a Reply (Doc. #86) on June 22, 2006. This Court held a hearing on the motion on July
20 6, 2006.

21 **I. BACKGROUND**

22 This dispute involves two monuments sculpted by Brett Livingstone Strong, the
23 Constitutional Monument and the Presidential Monument (collectively "the Monuments").
24 (Decl. of Lawrence A. Creeger in Supp. of Pl.'s Mot. for Prelim. Inj. & Renewed
25 Application for Writ of Possession ("Creeger Decl.") [Doc. #72] at 2.) As of February
26 2002, Jeffory Fairbrother ("Fairbrother") owned all rights in the Constitutional Monument.

1 (Id. at 3.) On February 5, 2002, Fairbrother and Defendant AMF entered into an asset
 2 purchase agreement in which Fairbrother agreed to sell to AMF the Constitutional
 3 Monument for \$2.5 million. (Creeger Decl., Ex. C.) In connection with this Agreement,
 4 AMF executed a promissory note in favor of Fairbrother in the amount of \$2.5 million.
 5 (Creeger Decl., Ex. D.)

6 In January 2002, Fairbrother entered into an asset purchase agreement in which
 7 he agreed to buy the Presidential Monument from Brian Hermelin and Linda Nelson for
 8 \$280,000. (Creeger Decl. at 3.) On February 5, 2002, Fairbrother and AMF agreed
 9 Fairbrother would sell to AMF all rights Fairbrother had in the asset purchase agreement for
 10 the Presidential Monument for \$280,000. (Id.) AMF and Fairbrother also entered into a
 11 security agreement granting Fairbrother a security interest in the Monuments. (Creeger
 12 Decl., Ex. E.) Fairbrother perfected his security interest in the Monuments by making the
 13 required filings in the states of Virginia, Nevada, and California. (Creeger Decl., Ex. F.)
 14 The Court will refer to the agreements between Fairbrother and AMF regarding the two
 15 Monuments collectively as the “AMF/Fairbrother Agreements.”

16 In June 2003, Fairbrother informed AMF it was in default under the
 17 AMF/Fairbrother Agreements. (Creeger Decl., Exs. G, H.) According to Plaintiff Global’s
 18 president, Lawrence A. Creeger (“Creeger”), Fairbrother stated repeatedly that AMF was
 19 not paying on the promissory note, and that without such payment he would be unable to
 20 pay for his son’s¹ health care needs. (Creeger Decl. at 4.) Creeger asserts Fairbrother also
 21 stated Fairbrother would be unable to pay a debt he owed to Global if AMF did not pay him
 22 on the note. (Id. at 5.)

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 26 ¹ Fairbrother’s son suffered a debilitating stroke in 2002. (Creeger Decl. at 4.)

1 On May 2, 2004, AMF and Global entered into an asset purchase agreement in
2 which AMF agreed to sell to Global the Monuments and all rights therein for \$600,000
3 (“AMF/Global Agreement”). (Opp’n to Global Eventmaker’s Mot. for Prelim. Inj. &
4 Renewed Application for Writ of Possession; Countermot. for Summ. J. as to AMF’s Claim
5 of Fraudulent Transfer [“Opp’n”] [Doc. #83], Ex. 10.) Completion of the AMF/Global
6 Agreement was contingent upon resolving all outstanding claims and litigation between
7 AMF and Fairbrother. (Id. at Schedule 1.4.)

8 According to Global, on May 19, 2004, Global and Fairbrother entered into an
9 agreement in which Fairbrother assigned all his rights in the Monuments and related
10 agreements and security interests to Global (the “Global/Fairbrother Agreement”). (Creeger
11 Decl. at 5 & Ex. I.) The Global/Fairbrother Agreement had several contingencies,
12 including that Fairbrother would settle all claims with AMF and others regarding the
13 Monuments by March 1, 2005. (Creeger Decl., Ex. I at Schedule 1.4.) If the parties met the
14 contingencies by March 1, 2005, the Global/Fairbrother Agreement required Fairbrother to
15 repay \$67,500 of the \$155,000 he owed to Global by March 1, 2005. (Creeger Decl., Ex. I
16 at Schedule 1.6.) If he did not pay off the debt by this date or the settlement was not final
17 by this date, Fairbrother would have to pay Global \$155,000 by March 22, 2005. (Id.) If
18 Fairbrother did not pay off the \$155,000 prior to that time, Global would forgive the
19 \$155,000 debt and place \$1.9 million in a trust account for Fairbrother’s son in exchange
20 for Fairbrother’s rights in the promissory note and security agreements on the Monuments.
21 (Id. & Schedule 1.2.)

22 Global was unable to secure Fairbrother’s cooperation, and the parties never
23 consummated the AMF/Global Agreement. (Opp’n, Exs. 12-19.) As a result, litigation
24 between AMF, AMF’s principal manager Thomas Neavitt (“Neavitt”), and Fairbrother
25 commenced. On December 1, 2004, Neavitt filed suit against Fairbrother for two Chinese
26 Gold bonds he sold to Fairbrother and for which Fairbrother had not paid. (Opp’n, Ex. 21.)

1 In November 2005, Neavitt obtained a default judgment against Fairbrother for
 2 approximately \$13 million. (Opp'n, Exs. 20, 21.) On November 30, 2005, Neavitt obtained
 3 a writ of execution identifying Fairbrother's interests in the purchase agreement, financing
 4 statements, and promissory note as possible sources for satisfying the judgment. (Opp'n,
 5 Ex. 22.) In late December 2005, Global filed UCC Financing Statements in Nevada,
 6 California, and Virginia to perfect its security interests in the Monuments allegedly obtained
 7 through the May 2004 Global/Fairbrother Agreement. (Creeger Decl., Ex. J.)

8 On October 14, 2004, AMF filed suit against Fairbrother in Nevada state court
 9 regarding right and title to the Monuments. (Notice of Removal of Action Under 28 U.S.C.
 10 § 1441(b) (Diversity) [2:05-CV-00019, Doc. #1], Ex. A.) Fairbrother removed the action to
 11 this Court. (Notice of Removal of Action Under 28 U.S.C. § 1441(b) (Diversity) [2:05-CV-
 12 00019, Doc. #1].) On April 22, 2005, Fairbrother filed an Answer and Counterclaims
 13 against AMF, asserting his rights in the purchase agreement, promissory note, and security
 14 agreement. (Def.'s Answer, Affirmative Defensives & Countercls. [Doc. #11].)

15 AMF currently is warehousing the Monuments in California.² (Decl. of Shawn
 16 A. Mangano, Esq. in Supp. of Pl.'s Mot. for Prelim. Inj. & Renewed Application for Writ of
 17 Possession ["Mangano Decl."] [Doc. #71], Ex. A at 28-29.) AMF has not made any
 18 payments towards the \$2.5 million note. (Id. at 35-40.) The AMF/Fairbrother Agreements
 19 required AMF to insure the Presidential Monument for \$5 million. (Id. at 19.) AMF has
 20 not purchased any such insurance. (Id.)

21 On January 13, 2006, Global brought suit in this Court alleging AMF breached
 22 the relevant agreements by failing to pay sums due and owing on the note, by failing to
 23 permit inspection of the Monuments, and by relocating the Monuments without Global's
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25 ² At the hearing conducted July 6, 2006, however, counsel clarified that one Monument is
 26 currently stored in Simi Valley, California and the other in Virginia.

1 consent (count one). (2:06-CV-00050, Compl. at 5-6.) Further, Global alleges AMF
 2 breached the covenant of good faith and fair dealing by falsely inducing Fairbrother to sell
 3 the Constitutional Monument to AMF and by falsely inducing Global to enter into the
 4 AMF/Global Agreement (count two). (Id. at 6-7.) Additionally, Global alleges it has a
 5 perfected security interest in the Monuments, AMF wrongfully has withheld the secured
 6 property, and Global therefore is entitled to an order compelling AMF to return the
 7 Monuments (count three [mislabeled in the Complaint as count four]). (Id. at 7-8.) Finally,
 8 Global asserts that because the Monuments are unique works of art, money damages are
 9 insufficient, and Global is entitled to specific performance under the AMF/Global
 10 Agreement (count four [mislabeled in the Complaint as count five]). (Id. at 8-9.) AMF has
 11 counterclaimed for fraudulent transfer, intentional interference with prospective economic
 12 advantage, and “special damages” for attorney’s fees. (Answer & Countercl. [Doc. #29,
 13 2:06-CV-00050].)

14 Global moves for a preliminary injunction, requesting the Court require AMF to
 15 obtain the contractually-required \$5 million in insurance on the Presidential Monument.
 16 Additionally, Global renews an earlier request for a writ of possession for the Monuments.
 17 Global asserts it is the proper owner with a security interest in the Monuments and AMF
 18 undisputedly has breached the agreements by failing to make a single payment on the note,
 19 by failing to procure insurance as required, by permitting a lien on the Monuments without
 20 Global’s approval, and by moving the Monuments without Global’s consent.

21 AMF responds that Global has no standing to enforce the agreements because the
 22 transfer of interests from Fairbrother to Global was fraudulent. AMF contends the transfer
 23 was done in the face of litigation against Fairbrother with the intent to defraud Fairbrother’s
 24 creditors.

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1 **II. LEGAL STANDARD**

2 “The traditional test for granting preliminary injunctive relief requires the
 3 applicant to demonstrate: (1) a likelihood of success on the merits; (2) a significant threat of
 4 irreparable injury; (3) that the balance of hardships favors the applicant; and (4) whether
 5 any public interest favors granting an injunction.” Raich v. Ashcroft, 352 F.3d 1222, 1227
 6 (9th Cir. 2003). Alternatively, an applicant seeking injunctive relief may demonstrate
 7 “either: a combination of probable success on the merits and the possibility of irreparable
 8 injury; or serious questions going to the merits and that the balance of hardships tips sharply
 9 in the applicant’s favor.” Id. These two formulations of the alternative test represent “a
 10 continuum of equitable discretion, whereby ‘the greater the relative hardship to the moving
 11 party, the less probability of success must be shown.’” Id. (quoting Nat’l Ctr. for
 12 Immigrants Rights, Inc. v. INS, 743 F.2d 1365, 1369 (9th Cir. 1984)).

13 A prohibitory injunction preserves the status quo whereas a mandatory injunction
 14 goes beyond maintaining the status quo. Stanley v. Univ. of S. Cal., 13 F.3d 1313, 1320
 15 (9th Cir. 1994). Mandatory injunctions are disfavored. Id. A court should not grant a
 16 mandatory preliminary injunction “unless the facts and law clearly favor the moving party.”
 17 Id. (quotations omitted).

18 **III. DISCUSSION**

19 Global moves for a preliminary injunction on two grounds. First Global asserts
 20 AMF has breached the agreement on the Presidential Monument to maintain \$5 million in
 21 insurance on this monument, and AMF should be required to obtain the insurance because
 22 AMF has no other assets to satisfy a judgment. Second, Global asserts it is entitled to a writ
 23 of possession.

24 **A. Insurance**

25 Global contends the AMF/Fairbrother Agreement, in which Global asserts it now
 26 owns Fairbrother’s rights, requires AMF to obtain \$5 million in insurance on the

1 Presidential Monument. Global contends AMF admits it has not obtained this insurance,
2 that this is a breach of the agreement, and AMF should be required to obtain the insurance.
3 Further, Global notes that AMF has no assets other than the Monuments and the
4 Monuments are one-of-a-kind pieces of art, and therefore loss or damage to them would
5 leave Global without a remedy. AMF asserts Global has no standing to assert any rights to
6 the Monuments or to enforce the AMF/Fairbrother Agreements' requirement that AMF
7 insure the Presidential Monument because of the alleged fraudulent transfer between
8 Fairbrother and Global.

9 AMF is contractually required to obtain the insurance under the AMF/Fairbrother
10 Agreement. AMF's principal manager, Neavitt, testified at his deposition that AMF had not
11 secured the insurance. AMF has no substantial assets beyond the Monuments themselves.
12 Should Global prevail, AMF has no means to satisfy a judgment should something happen
13 to the Monuments without insurance.

14 At the hearing in this matter, AMF agreed it had no assets other than the
15 Monuments, but it believed the Monuments were secure in storage and faced little to no
16 possibility of theft or damage. AMF requested that if it is required to obtain insurance on
17 the Monuments, the Court require Global to post a bond sufficient to cover AMF's costs
18 should AMF ultimately prevail. The Court concludes this argument best protects the
19 interests of all parties.

20 The Monuments are the crux of this dispute, and should those assets be damaged,
21 destroyed, or lost, Global is without remedy as AMF has no other assets. Additionally, the
22 bond from Global ensures that should AMF prevail in this matter, it will be capable of
23 recovering the insurance cost. Because the AMF/Fairbrother Agreements contractually
24 required AMF to obtain \$5 million in insurance on the Presidential Monument, the Court
25 will order AMF to obtain said insurance, unless the parties mutually agree in writing on
26 another amount. Additionally, should the parties mutually agree in writing that the

1 Monuments are secure in their present locations such that insurance and the associated bond
2 are unnecessary, the parties may notify the Court of such agreement, and the Court will
3 vacate the preliminary injunction requiring insurance and the associated bond.

4 **B. Writ of Possession**

5 Global next moves for a writ of possession, asserting it owns Fairbrother's rights
6 in the AMF/Fairbrother Agreements; AMF has breached the AMF/Fairbrother Agreements;
7 and Global is entitled to possess the Monuments. AMF responds that Global has no
8 standing to assert interests in the AMF/Fairbrother Agreements because the transfer
9 between Global and Fairbrother was fraudulent.

10 Serious questions going to the merits of the fraudulent transfer issue remain and
11 the parties are in the process of briefing summary judgment motions on the issue of AMF's
12 challenge to Global's standing to assert interests in the AMF/Fairbrother Agreements. If
13 the transfer between Global and Fairbrother was fraudulent, Global has no right to possess
14 the Monuments. Global's concerns about the Monuments' safety and Global's ability to
15 recover against AMF will be alleviated by the Court's order requiring AMF to obtain
16 insurance. The Court therefore will deny without prejudice Global's motion for writ of
17 possession.

18 **IV. CONCLUSION**

19 IT IS THEREFORE ORDERED that Plaintiff Global Eventmakers, Inc.'s Motion
20 for Preliminary Injunction and Renewed Application for Writ of Possession (Doc. #69) is
21 hereby GRANTED in part and DENIED in part. The motion is granted in that the Court
22 will order Defendant American Monument Foundation, LLC to insure the Presidential
23 Monument. Plaintiff's motion for a writ of possession is denied without prejudice.

24 IT IS FURTHER ORDERED that Defendant American Monument Foundation,
25 LLC obtain \$5 million in insurance on the Presidential Monument, as contractually
26 required, unless the parties otherwise agree in writing to another amount.

1 IT IS FURTHER ORDERED that Plaintiff Global Eventmakers, Inc. post a bond
2 equal to the costs incurred by Defendant American Monument Foundation, LLC, in
3 securing the insurance required by this Order.

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5 DATED: July 7, 2006

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7 PHILIP M. PRO
8 Chief United States District Judge

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